

CHAPTER 4-14

UNFAIR DISCRIMINATION IN PURCHASE OF FARM PRODUCTS

4-14-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Bona fide competitor" is deemed to be a duly licensed dealer in any farm product maintaining a place of business in the same trade territory.
2. "Farm products" means butter, milk, cream, butterfat, cheese, and other dairy products, honey, eggs, poultry, and grain.
3. "Person" means an individual, firm, copartnership, corporation, limited liability company, or association.

4-14-02. Unfair discrimination - Exception. Any person engaged in the business of buying farm products for manufacture or sale who discriminates between different sections, localities, communities, or cities, of this state, by purchasing farm products at a higher price or rate in one locality than is paid for such products of the same kind, quality, and grade by such person in another section, locality, community, or city, or than is paid to another person of the same community, after making due allowance for the difference, if any, in the actual cost of transportation paid from the locality of purchase to the locality of manufacture or sale, is guilty of unfair discrimination. It is not unfair discrimination for any person to pay in any section, locality, community, or city, a price equal to that actually paid on the same day by any bona fide competitor in such section or locality for farm products of the same kind and grade if such price is paid in a bona fide and good faith effort to meet competition, and in such case, the burden of proving such facts is upon the defendant.

4-14-03. Different prices in purchase of agricultural products to be prima facie evidence. Proof that any person has paid a higher price for any farm products in one section, locality, community, or city, than in another, or has paid another person a different price for the same kind and quality of product in the same community, after due allowance for the cost of transportation has been made, is prima facie evidence of a violation of this chapter.

4-14-04. Unfair discrimination in sale of farm products. Any person doing business in the state of North Dakota and engaged in the manufacture, distribution, or sale of farm products who discriminates between different sections, communities, cities, or portions thereof in this state, by selling at a lower price or rate in one section, community, city, or portion thereof than is charged by such person for such farm products in another section, community, city, or portion thereof, after making due allowance for the difference, if any, in the actual cost of transportation of such products, is guilty of unfair discrimination. Proof of such differential in price is prima facie evidence of violation of this section in a civil action. It is not unfair discrimination for any person to sell in any section, locality, community, or city, at a price equal to that actually charged on the same day by any bona fide competitor in such section or locality for farm products of the same kind and grade if such price is charged in a bona fide and good faith effort to meet competition, and in such case, the burden of proving such facts is upon the defendant in a civil action.

4-14-05. Complaint of unfair discrimination - Investigation - Prosecution - Duty of agriculture commissioner. When a complaint is made to the agriculture commissioner or to the dairy commissioner that any person is guilty of unfair discrimination, either of them shall investigate such complaint, or either, upon that individual's own initiative, may ascertain whether this chapter has been violated, and in either event may subpoena, supervise, and control witnesses, administer oaths, and take testimony, the same as the district court. If, in the agriculture commissioner's opinion, sufficient ground exists therefor, the agriculture commissioner may report the facts to the attorney general who thereupon shall prosecute an action in the name of this state in the proper court to annul the charter of any corporation or limited liability company violating the provisions of this chapter. If any corporation or limited

liability company is adjudged by the courts to be guilty of unfair discrimination, the court may vacate the charter or revoke the authority of such corporation or limited liability company to do business in the state of North Dakota, and may enjoin it permanently from transacting business in this state.

4-14-06. Enforcement of chapter. The agriculture commissioner, the state dairy commissioner and his deputies, assistants, and agents, and the state's attorneys, sheriffs, and peace officers of the respective counties, shall enforce the provisions of this chapter. The authority extended to the agriculture commissioner and to the state dairy commissioner under this chapter must be considered as a duty of such officers only, and does not preclude any other prosecuting officer or any interested party from instituting proceedings, civil or criminal, for the enforcement of any of the provisions of this chapter.

4-14-07. Penalty. Any person violating the provisions of this chapter is guilty of a class A misdemeanor.

4-14-08. Remedies of chapter cumulative. The remedies provided in this chapter are cumulative and not exclusive.

4-14-09. Unfair trade practices in the dairy industry.

1. As used in this section, the term "dairy products" includes milk, cream, butter, cheese, cheese food, ice cream, frozen desserts, ice milk, sherbet, and any other edible product manufactured or processed which has any of such products as its principal ingredients.
2. Each of the practices described in this subsection is declared to be an unfair trade practice. It is unlawful for any person to be engaged in such practices. No person who is a dealer in or a vendor of dairy products, for sale to a retailer or who sells dairy products to any person for retail sales may:
 - a. Give or extend discounts on dairy products sold to retail outlets, except for standard printed public discounts which fairly represent costs savings which may be passed on to the consumer.
 - b. Make payments of money, credit, gifts, or loans to retail outlets as rental for the storage or display of dairy products on the premises where they are offered for sale.
 - c. Maintain or make repairs of any equipment owned by a retail outlet, except that used exclusively for dairy products, charging comparative, competitive commercial fees and charges for the service and parts.
 - d. Give any gift of money, merchandise, services, or materials of any value to any retail outlet, except bona fide charities, except such services heretofore specifically permitted.
3. Nothing in this section may be interpreted to prohibit the operation of a retail outlet by a person who is also a dealer in or a vendor of retail products for sale to a retailer or for retail sales or to prohibit the use by that person in such retail outlet any equipment or advertising or miscellaneous matter owned by that person provided that such retail outlet is under direct control and management of the dealer.
4. Nothing in this section may be interpreted to prohibit the giving away of merchandise to be consumed on the premises.
5. For the purpose of this section any subsidiary or affiliate corporation, cooperative, officer, director, manager, governor, or partner of a corporation, a limited liability

company, a cooperative, or partnership which is a dealer in or a vendor of dairy products is deemed to be a dealer in or vendor of dairy products.

4-14-10. Contracts void, penalty. All contracts and agreements made in violation of sections 4-14-09 through 4-14-11 are void. Any person who violates any of the provisions of sections 4-14-09 through 4-14-11 is guilty of a class B misdemeanor.

4-14-11. Enforcement of fair trade practices. The attorney general is responsible for the enforcement of sections 4-14-09 through 4-14-11. Prosecution of violators of sections 4-14-09 through 4-14-11 is under the supervision of the state's attorney of the county in which the violation occurred.